IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-745

OWENS-ILLINOIS, INC.,
Petitioner,

v.

JOHN SCHULTZ, et al.,
Respondents.

BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERTIORARI

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Now comes the Respondents, John Schultz, et al., and respectfully prays that the Petitions for a Writ of Certiorari filed in this proceeding be denied inasmuch as no basis exists for the granting of said Writ.

REASONS FOR DENYING THE WRIT

A. Each Petitioner herein, in their respective Petitions for a Writ of Certiorari, presented as their first question the issue of whether the rights asserted by the Respondents were "uniquely personal" thereby giving them standing to sue under Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. § 185.

Cases cited by each Petitioner in their briefs establish the fact that two types of contract rights flow from a collective bargaining agreement. There are those which are of a broad policy nature and are exclusively within the control of the Union and those which are uniquely personal, flowing from individual grievances, concerning which the individual has a standing to sue. The issue presented to and decided by the Court of Appeals, Seventh Circuit, was which class an apprenticeship program falls into.

The decision of the Seventh Circuit that an apprenticeship program bestows personal rights upon the individual union member-employee is a reasonable and logical extension of the rational of this court in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). The only other known reported case in this area supports the conclusion of the Court of Appeals. *Arnold v. United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry*, 388 F Supp 1105 (1975). No circuit is in conflict with the results of the Seventh Circuit on this issue. There exists no question of Federal law which is so important as to require the issuance of a Writ of Certiorari. The Petitioners, although displeased with the conclusion of the Seventh Circuit, are not able to present any court decisions to support their position. It is easy to understand why a union and a company desire to severely restrict the rights of individuals to seek court relief when they refuse to enforce their own written agreement. This desire on their part does not, however, provide a reason for this Court to review the logical and well reasoned conclusions of the Seventh Circuit.

B. Each Petitioner herein, in their respective Petitions and in differing language, raises the question of the propriety of the action of the Seventh Circuit in interpreting provisions of the Collective Bargaining Agreement relating to the Apprenticeship program.

The actions of the Court of Appeals were entirely proper and justified. The Court of Appeals was presented, as part of the Supplemental Appendix, the complete language of the Collective Bargaining Agreement in effect between the Petitioners. At no time was it claimed by any party that this was not in fact a true and accurate copy of that agreement.

> "The intention of the parties must be found in the language used to express such intention, and if the court finds as a matter of law that the contract is unambiguous, evidence of the intention and acts of the parties plays no part in the decision."

Anson v. Hiram Walker & Sons, 222 F2d 100 (1955). Under established procedure the first responsibility of the Court is to determine if any ambiguity exists in the contract language. This is exactly what the Seventh Circuit did in its decision. The Collective Bargaining Agreement was presented to it as part of the record and the Court found *as a matter of law* that no ambiguity exists in the language of that portion of the contract involved herein. Inasmuch as the Court made this finding of law the issue is now resolved in accordance with established judicial procedure. All evidence as to past negotiations is therefore immaterial. The Seventh Circuit was proper in making its decision without considering irrelevant and immaterial evidence.

Both Petitioners cite the case of *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960) relying on the language of the Court encouraging arbitration. The meaning of the *Steelwork-*

ers case in a contract interpretation situation was discussed in detail in *Local 783, Allied Industrial Workers of America, AFL-CIO v. General Electric Company*, 471 F2d 751 (1973). The Court after stating the well established rule that evidence of negotiations and surrounding circumstances will be received in evidence only if the language of the contract is found to be ambiguous, went on to cite the *Steelworkers* case. The Court stated:

> "We do not think the Court was formulating a rule that provides for the use of evidence apart from the contract language itself, even though the meaning of the contract is clear. Rather, we think that the Court was stating that such evidence is to be used when the contract is in need of interpretation." p. 757

The action of the Seventh Circuit, in finding as a matter of law that no ambiguity exists in the language of the contract means that no evidence as to negotiations or intentions of the parties is or could be relevant and follows numerous well reasoned court decisions. There exists no dispute among the Circuits as to the authority of the courts to interpret the contract. There is no basis for issuing a Writ of Certiorari merely because the Seventh Circuit found as a matter of law that the language of the contract is clear and unambiguous since this is clearly within its authority.

CONCLUSION

Wherefore, Respondents herein respectfully request this Court to deny the Petitions for Certiorari filed herein inasmuch as the Petitioners have failed to show any reason why such a Writ should issue. The decision of the Seventh Circuit, Court of Appeals is logical and well reasoned, does not conflict with any

existing court decisions and is clearly within the authority granted to said court.

Respectfully submitted,

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